

CECILIA J. CUIN

IBLA 78-441

Decided August 15, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting desert land entry petition-application W 61835.

Affirmed.

1. Desert Land Entry: Generally -- Desert Land Entry: Applications -- Withdrawals and Reservations: Effect of

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical; and geological values in public lands along the North Platte River.

2. Desert Land Entry: Generally -- Withdrawals and Reservations: Generally

Objections raised on appeal to the Interior Board of Land Appeals to the merits of withdrawal of public lands in order to protect recreational, historical, and geological values in public lands along the North Platte River, will not vitiate its effect as a bar to the availability of the lands under the desert land laws, as it is not within the Board's function or authority to take the steps necessary to revoke the withdrawal, restore the lands to the operation of the public land laws, and classify it as suitable for disposition as a desert land entry.

APPEARANCES: Cecilia J. Cuin, Casper, Wyoming, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On November 14, 1977, Cecilia J. Cuin filed a desert land entry petition-application with the Wyoming State Office, Bureau of Land Management (BLM). On April 26, 1978, BLM issued a decision rejecting this petition-application because the lands described therein were withdrawn and reserved by PLO 5408 on February 12, 1974, for the protection of recreational, historical, and geological values along the North Platte River, and accordingly was segregated from all forms of appropriation, including desert land entries. Cuin (appellant) filed a notice of appeal from this decision.

[1] By its own terms, PLO 5408 withdrew the lands for which appellant applied from all forms of appropriation under the public land laws. It is well established that a withdrawal of land bars entry, location, or other disposals thereof under the public land laws. Henry E. Reeves, 31 IBLA 242 (1977); T. E. Markham, 24 IBLA 5 (1976); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976); and cases cited therein. Under 43 CFR 2520.0-8(a), desert land entries may be made only on unreserved public lands. The lands in question were reserved from all forms of appropriation by PLO 5408 and, therefore, were not open to desert land entry. Accordingly, BLM properly rejected the application.

[2] On appeal, Cuin argues that the lands should be "reclassified," arguing that the land has little value for the stated purposes of the withdrawal, but has good agricultural potential. However, the withdrawal operates as a bar to the disposal of the lands. William J. Smith, Sr., 33 IBLA 47 (1977). In order to become available for desert land entry, the withdrawal of the lands in question would first have to be revoked. Then, the lands would have to be restored to the operation of the public laws. Finally, the lands would have to be classified as suitable for disposition under the desert land laws. It is not within the function or authority of this Board to undertake these actions. Moreover, it is required by regulation that applications which are accepted for filing must be rejected, and cannot be held pending possible future availability of the land when approval of the application is prevented by a withdrawal or reservation. 43 CFR 2091.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

